

MINUTES
ENVIRONMENTAL REVIEW COMMISSION
February 23, 2012

The Environmental Review Commission (ERC or Commission) met on Thursday, February 23, 2012 at 9:00 a.m. in Room 643 of the Legislative Office Building. Representative Samuelson presided.

The following members were present: Representative Mitch Gillespie Co-Chair, Senators Stan Bingham, Daniel Clodfelter, Brent Jackson, Representatives Joe Hackney, Pat McElraft, and Roger West. Also present were: Mr. Jeff Hudson, Ms. Jennifer McGinnis, and Ms. Susan Iddings, Commission Counsels; Ms. Jennifer Mundt, Commission Analyst; Ms. Mariah Matheson, Research Assistant; Ms. Susan Phillips, Commission Clerk; and Sergeants-at-Arms John Brand, Reggie Sills, Martha Gaddison, Ken Kirby, John Fitchett and Ernie Sherrell. (Attendance Attachment 1).

On February 9, 2012, notice was sent to members and interested parties via e-mail. A copy of this notice is incorporated into these minutes as Attachment #2. Copies of the agenda for the meeting and visitor registration sheets are included as Attachment #3 and Attachment #4.

Representative Samuelson called the meeting to order and welcomed members, staff, and visitors in attendance. There were no introductory remarks made by the Commission Co-Chairs. Representative Samuelson recognized Representative Mitch Gillespie for a discussion of the State Air Toxics Program.

Representative Gillespie provided a draft bill for discussion only (State Air Toxics Reform Bill Draft 2011-SBz-25[v.14] (11/28)) and explained the process used to draft this bill. Representative Gillespie discussed the meetings held with stakeholders to find common ground for reforming air toxic laws in North Carolina.

Representative Samuelson asked Commission Counsel, Jeff Hudson, to explain the draft bill to the Commission.

Mr. Hudson explained the statutory basis for the State Air Toxics Program, which was created by the Environmental Management Commission (EMC) after it was statutorily directed to establish such a program. The related statutes include just a few sentences while the administrative code consists of at least 30 pages of rules. The program is largely in the rules and this legislative draft is an interplay between changes to the statutory language and these associated rules. This legislative proposal directs the Department of Environment and Natural Resources (DENR) to implement the air toxic rules as provided in the new language. Section 1 of the draft legislation would (1) provide that the State Air Toxics Program would not apply to any air emission source that is subject to certain federal emission requirements under the Clean Air Act and (2) codifies the "Director's Call" to authorize DENR, upon a written finding that a source or facility presents or will present an unacceptable risk to human health, to require the

owner or operator of a facility to submit a permit application for any or all emissions that eliminates the unacceptable risk to human health.

Section 2 of the proposed legislation directs the Division of Air Quality (DAQ) of DENR to review the adoption and implementation of toxic air pollutant rules to determine if changes could be made to reduce unnecessary regulatory burden and increase efficient use of DAQ resources, while maintaining public health. DAQ must conduct this review in consultation with interested stakeholders and report the results to the Commission no later than November 30, 2012.

Representative Hackney asked if this bill would end fence line monitoring for air toxics in North Carolina. Mr. Hudson answered that the exception only applies to sources that are covered by the federal MACT standards or if those standards haven't been adopted by a particular deadline, then the State can enforce it. There are certain air toxics not identified under federal law that would still be subject to the State program, as they are detrimental to public health.

Representative Hackney requested additional information on fence line monitoring. Mr. Hudson replied that the proposed legislation would not change fence line monitoring, as DENR will continue to look at ambient standards.

Ms. Sheila Holman, the Director of DAQ in DENR stated that the rules currently do not require fence line "monitoring," rather the rules require fence line "modeling" requirements. If a source wants to change its operation and increase air toxic emissions, new modeling may be required. The legislation would exempt those units from fence line modeling.

Representative Hackney asked what portion of the current fence line modeling would this bill exclude. Is it 25%, 1%, 75%, or 50% ?

Ms. Holman replied that she didn't have those figures with her; however, she would get them to Representative Hackney. Ms. Holman said that federal standards cover a significant portion of air toxics emissions, which she believes is more than 50%.

Representative Hackney said that he wanted the Commission to be aware of the potential widespread impact of the proposed legislation.

Representative Gillespie commented that Representative Hackney had a valid concern. Representative Gillespie asked Ms. Holman to clarify. He reiterated that DENR would continue to do some modeling, although some of the fence line testing would be eliminated. Representative Gillespie said that DENR will continue to monitor the facilities; however, they would not require modeling from those facilities. DENR would still be aware if there was a threat to public health at the fence line of those facilities. At that point DENR could use the Director's Call. Representative Gillespie asks Ms. Holman if that is correct?

Sheila Holman stated that Representative Gillespie was correct. According to Ms. Holman, DENR would continue to conduct facility-wide modeling for emission units not subject to federal standards. DENR would continue to look at the overall emissions at a given facility to determine if there is an unacceptable health risk. If DENR believed additional information was

required to ensure the public health is not at risk, they would have the ability to require that. That is in the second paragraph of the proposed legislation.

Representative Hackney asked is there would be an opportunity for public comment? Mr. Hudson stated that the legislation asks for a written finding that can be based on many sources, not just modeling data.

Representative McElraft asked for a comparison of what other states have done when they changed their air toxics programs. Ms. Holman stated that they have detailed information on what Virginia and South Carolina have done and they will provide it to the Commission.

Representative Samuelson recognized Mr. Chuck Wakild, Director of the Division of Water Quality (DWQ), DENR, for a report on the implementation and application of the Neuse and Tar-Pamlico Riparian Buffer Rules. Mr. Wakild provided a full copy of the report to the Commission (Attachment 5) and a copy of his PowerPoint presentation to the Commission (Attachment 6). Mr. Wakild gave an overview of the report including DENR's conclusions and recommendations:

- Scientific literature indicates that a 50 foot buffer provides for effective nutrient removal from existing landscapes to protect the water quality in the Neuse and Tar-Pamlico River Basins.
- DENR does not recommend removing the existing riparian buffer requirements because of the significant nutrient removal that buffers perform and it would place an increased burden for nutrient reductions on wastewater treatment plants, agriculture, and development.
- DENR does recommend expanding the flexibility provided to coastal counties outlined in Session Law 2011-394 to all single family residential lots throughout the Neuse and Tar-Pamlico River Basins.

Representative Samuelson asked if the riparian buffers were removed would that increase the burden on the other three sources by 30%? Mr. Wakild replied that it would be more than 30%. It would add an additional 30% from all nitrogen sources combined. That's why it is a much bigger number. It increases the total loading to the rivers by 30% of the total that currently exists.

Representative Samuelson asked if it would increase the amount of nitrogen that the other three source categories would have to reduce by even more. Mr. Wakild responded that it would.

Representative Hackney asked if most people did not object to buffers between their buildings/construction and the river? Mr. Wakild said that was a fair characterization. There are many things people can do in their buffers.

Representative Hackney asked if most welcome vegetation between themselves and the rivers? And if so, doesn't that increase the value of their lot? Mr. Wakild replied that he would hope it would. The buffer rules have been in effect for more than 10 years and people see the value in the rules.

Representative Hackney asked what was the number one objection to the buffers? Mr. Wakild said that people want a view of the water, and we are trying to accommodate this and help when we can.

Representative McElraft asked if you wanted to build a walkway, a gazebo, or a boat dock at your property, would you to? Mr. Wakild responded yes.

Representative McElraft asked how much are you allowed to disturb in the buffer? Is there a limit on how big the gazebo can be?

Ms. Amy Chapman, DWQ, DENR, said that there is not a minimum/maximum limitation. You have to show that you have avoided and minimized the impact on the buffer zone as much as possible, submit your plans for approval, and then build when the plans are approved.

Representative McElraft asked how much of nitrogen pollution is from wildlife? Mr. Wakild responded that DWQ does not know for sure, but it comes from everywhere.

Representative McElraft asked how much can you top off trees for a water view on a sound front or a riverfront lot? Mr. Wakild said it is not so much an issue with topping off trees, as it is with pruning them. Mr. Wakild said that the guidelines are listed in the rules and available on the website.

Representative McElraft asked if an owner of a heavily wooded riverfront lot could cut down any trees? Mr. Wakild responded that trees cannot be cut down in the buffer zone, as you cannot clear the buffer zone. According to Mr. Wakild, the 50 foot buffer zone is divided; the 30 feet closest to the river must be kept in an undisturbed state, the remaining 20 feet can be managed vegetation such as grass or landscaping.

Senator Bingham asked for a comparison of the problems with agricultural sources versus stormwater sources and waste water treatment plants and a brief history of how that has occurred? Senator Bingham said that he was under the impression that agriculture was a major nitrogen source because of the concentration of farming near rivers and other bodies of water. Mr. Wakild said that he hesitated to make a broad generalization and that nitrogen problems are location specific. Depending upon the location, some sites are heavily impacted by agriculture versus urban stormwater or by some other source. What the EMC tried to do in establishing these rules was to review all of the factors and receive input from various interest groups in order to find what was fair, reasonable, and generally proportionate. It depends on the location as to determining the dominant source of nitrogen.

Senator Bingham asked for data on where some of the larger farms are? Mr. Wakild said that in recent studies they have developed more sophisticated land use models in order to identify the different types of land uses, particularly in Falls Lake. There is scientific literature that predicts how much nitrogen will leave particular types of land use. The federal government then decides how much nitrogen is allowed. There is also data in certain areas of the Upper Neuse, but when these rules were being developed, DENR didn't have such precise information.

Representative Samuelson recognized Ms. Edythe McKinney, Director of the Division of Environmental Assistance and Outreach, DENR, to present a report on the results of customer surveys and listening sessions conducted by DENR during the fall of 2011. A copy of Ms. McKinney's PowerPoint presentation on DENR Customer Feedback for Regulatory Improvement is included (Attachment 7). The major topics of the survey were customer service, internal processes, outreach and communication, and permit review. Ms. McKinney said that out of 200 respondents, three out of five respondents gave DENE a score of five on a five-point scale. The survey determined that improvement was needed in the areas of training, E-permitting, and customer service.

Ms. McKinney said that the survey information was shared with the division directors and policy makers earlier this year and steps are being taken to improve those areas. A follow-up report on progress in these areas will be made in May 2012.

Representative Samuelson asked how participants were invited to take part in the survey and if critics of DENR were invited to take part? Ms. McKinney responded that originally invitees were primarily chosen through the regional offices and were identified by staff as having experience with DENR. Ms. McKinney said that DENR publicized the surveys, talked to a number of associations, and realized that DENR may have missed people. They tried to get a cross-section of people who had permits, including farmers, small businesses, and people who were unhappy with DENR. Then once it was publicized and announced, we had the survey include people who were not invited. Ms. McKinney said that in at least one instance she heard that some people were not represented enough. Upon hearing that, DENR followed-up with those customers. Ms. McKinney acknowledged that there are always some people who didn't participate, but she is receptive to talking to them if a group feels excluded.

Representative Samuelson asked how the information was distributed (ie. via mail, email, public service announcement, internet, newspaper ads, etc.). Ms. McKinney said that the invitations were sent primarily via email and personal follow up. There were no public service announcements or newspaper advertisements; however, there was a press release. DENR was trying to limit the listening sessions to about 25 to 35 people. There had been a whole series of larger groups and we wanted to have some of those people come talk about specific things.

Senator Bingham asked about the industrial perspective. He noted that Representative Gillespie had mentioned permitting and the length of time it took. Senator Bingham has heard complaints from the industrial community about the length of time the process takes as well. He asked if something was falling through the cracks or if other states were doing things differently? Ms. McKinney said that the timeliness of a permit was one of the reasons why they reviewed internal processes and permit review. One of the things to come out of the listening sessions was that one reason the process takes so long is because DENR can receive the wrong information from a customer and does not communicate that fact effectively to the applicant. The listening sessions helped both sides know more about communication and training and sitting down across the table and knowing what the expectations were and how they apply to you. Issues like timeliness came up, as did ways our customers and staff suggested that we might approach things better.

Senator Bingham inquired about the second most prominent question he hears, which is regarding the fines and fees. For example, DENR can levy a large fine against someone with a small farm, which may make people reluctant to talk to DENR, maybe because they are concerned about not having legal representation, what to say/what not to say. Thus, some people may not wish to participate in the listening sessions, as they are afraid they'd be penalized for it. Ms. McKinney said that that was one of the things that DENR tried to be sensitive of, which is why they didn't put participant's comments beside what they said. She continued that there was one group that was very concerned that what they said would get back to the regulators, which is why there were no regulators at these meetings. Ms. McKinney said that her staff coordinated these meetings because DENR wanted the participants to feel free to discuss things with us. She noted that part of the process was to meet with the regulatory division staff to discuss the comments about their agencies, because DENR wants to improve.

Senator Jackson, Representative Gillespie, and Representative McElraft all commented that the study was a good first step toward improving the customer service of the department.

There being no further business, the meeting was adjourned at 10:28 AM.

Co-Chair Senator David Rouzer

Co-Chair Representative Mitch Gillespie

Co-Chair Representative Ruth Samuelson

Susan Phillips, Commission Clerk